

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
DTE GAS COMPANY for)	
approval of a gas cost recovery plan, five-year)	Case No. U-17941
forecast, and authorization of gas cost recovery)	
factors for the 12-month period ended)	
March 31, 2017.)	
_____)	

At the May 11, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On December 30, 2015, DTE Gas Company (DTE Gas) filed an application, with supporting testimony and exhibits, requesting approval of its gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2017. DTE Gas's application was filed pursuant to Section 6h of 1982 PA 304 (Act 304), MCL 460.6h. DTE Gas requests to implement a maximum base GCR factor of \$3.44 per thousand cubic feet (Mcf) that can be increased in accordance with a contingency factor matrix based on increases in New York Mercantile Exchange (NYMEX) gas commodity prices resulting in a new maximum GCR factor. The company also requests a supplier of last resort (SOLR) reservation charge of \$0.29 per Mcf to be billed to both GCR and gas

customer choice (GCC) customers. DTE Gas projects total gas purchase costs of \$423.7 million and a total of \$44.7 million for transportation and parking service costs. DTE Gas also projects a total gas sales for both GCR and GCC customers at a volume of 146 billion cubic feet (Bcf). The utility also presented a five-year forecast of the cost of gas with its application.

A prehearing conference was held on February 10, 2016, before Administrative Law Judge Mark D. Eyster (ALJ). At the prehearing conference, the ALJ granted petitions to intervene filed by the Michigan Department of the Attorney General (Attorney General), ANR Pipeline Company (ANR), and the Retail Energy Supply Association (RESA). The Commission Staff (Staff) also participated in the proceedings.

An evidentiary hearing was conducted on July 11-12, 2016. The parties filed briefs on August 12, 2016. DTE Gas, RESA, ANR, and the Attorney General filed reply briefs on September 2, 2016. The ALJ issued his Proposal for Decision (PFD) on January 6, 2017. The Attorney General filed exceptions to the PFD on January 18, 2017. DTE Gas and RESA filed exceptions on January 20, 2017. DTE Gas, the Attorney General, and RESA filed replies to exceptions on February 3, 2017. The record in this case consists of 629 pages of transcript and 86 exhibits that were admitted into evidence.

Proposal For Decision

The ALJ initially determined that most of the components of DTE Gas's GCR plan and five-year forecast were unopposed and appeared reasonable. The Commission agrees that those components of DTE Gas's plan and 5-year forecast not specifically addressed by the ALJ are reasonable and should be approved. Therefore, the Commission will only address the contested issues vetted by the ALJ.

The ALJ discussed the following contested issues concerning DTE Gas's GCR plan and forecast: (1) DTE Gas's NEXUS capacity agreement; (2) RESA's proposal to reallocate the reservation charge; (3) DTE Gas's purchase of firm parking service; (4) the methodology for the GCR factor calculation and reservation charge; and (5) DTE Gas's volume cost averaging gas purchasing strategy.

Intervention of ANR and RESA

Although not specifically addressed in the PFD, DTE Gas did object to the ALJ's granting permissive intervention to ANR and RESA. DTE Gas renewed the same objections in its exceptions. In granting permissive intervention, the ALJ found that the Commission had upheld the issuance of permissive intervention to both ANR and RESA in past GCR cases. The ALJ further stated that both ANR and RESA brought a lot to the table in developing issues.

In its November 22, 2016 order in Case No. U-17691 (November 22 order), the Commission was asked to address almost identical arguments regarding ANR's intervention. In that case, the Commission agreed with the ALJ's grant of permissive intervention and provided:

The Commission has long held that prospective intervenors must generally satisfy the two-prong test established in *Association of Data Processing Services Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970), which has been applied to utility matters in *Drake v The Detroit Edison Company*, 453 F Supp 1123, 1127 (WD Mich, 1978). This test requires the party in question to show: (1) that it suffered an injury in fact, and (2) that the interest allegedly damaged falls within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

Regarding the second prong of the two-part test in *Data Processing, supra*, DTE Gas argues that ANR's status as a competitor disqualifies it from intervening in this case. Although a panel of the Court of Appeals has concluded that competitive interests are not within the zone of interests protected by Act 304, *In the matter of the Application of Michigan Consolidated Gas Co (National Energy Marketer's Assoc v Pub Serv Comm)*, unpublished per curiam opinion of the Michigan Court of Appeals, issued January 21, 2010 (Docket No. 282810), the Commission's discretion to grant leave to intervene is broader than the two-prong test set forth in *Data Processing*. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied

by the courts. December 8, 1992 order in Case No. U-10150; June 5, 1996 order in Case No. U-11057. For example, the Commission can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation, or when the intervenor will bring a unique perspective to the issues raised by the case.

Id.

In this case, the Commission agrees with the ALJ that both ANR and RESA will bring a unique perspective to the case and will assist in developing a more robust record for this GCR proceeding. The Commission further finds that the benefits of allowing ANR and RESA to participate in this proceeding outweigh any concerns over any potential delay. Thus, granting permissive intervention to ANR and RESA is supported by the Commission.

NEXUS Pipeline

The NEXUS pipeline is a proposed project jointly developed by DTE Pipeline Company and Spectra Energy Corp. The pipeline is designed to transport Appalachian Basin gas to customers in the Midwest, including Michigan. The 250 mile pipeline is expected to have a total capacity to transport 1.5 Bcf of natural gas per day. 2 Tr 96. The target in-service date is November 1, 2017. 2 Tr 97.

DTE Gas has entered into a precedent agreement (PA) with NEXUS for transportation of 75 thousand decatherms per day (MDth/day) of Utica and Marcellus shale production gas to the DTE Gas system for a 15-year period. 2 Tr 263. DTE Gas expects capacity to begin with the target in-service date of November 17, 2017. *Id.* DTE Gas argues that it has demonstrated that NEXUS capacity expenses will result in overall cost savings to its customers in the range of \$375 million to \$847 million over the term of the contract. DTE Gas further provides that the addition of the NEXUS transmission to its transportation portfolio will increase the utility's security and diversity of supply. 2 Tr 107-111. DTE Gas argued that it is taking the necessary steps during the 2016-

2017 GCR plan year to replace 75 MDth/day of existing transport with this NEXUS capacity. DTE Gas's brief, p. 32. DTE Gas argued that the Commission may approve the expenses associated with the company's NEXUS PA as part of its five-year forecast and thus requested approval of those expenses pursuant to MCL 460.6h(7).

The Staff supported the terms of the precedent agreement. The Staff, however, specifically provided that DTE Gas has not submitted the actual contract between NEXUS and the company for approval. The Staff, therefore, did not make a recommendation on the actual contract.

The Attorney General argued, as he did in Case No. U-17691, that approval of the NEXUS costs are barred by MCL 460.6h(7), which reads:

In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

The Attorney General argued that the statutory language does not provide the Commission with the requisite authority to specifically approve costs that are only included as part of the five-year forecast.

ANR argued that although DTE Gas's plan to diversify its supply with Appalachian gas is warranted, the utility did not demonstrate "that costs of the NEXUS contract for which it seeks pre-approval were incurred through reasonable and prudent actions and in a manner that minimizes its gas transportation costs." ANR brief, p. 5. ANR argued that Act 304 requires DTE Gas to explain its regulatory and legal actions taken to minimize the cost of gas purchased and that DTE Gas failed to sufficiently explore several alternatives that were readily available to the utility.

ANR further argued that DTE Gas's evidence submitted in this case to support its contract with NEXUS is substantially the same as which was rejected in Case No. U-17691. ANR argued

that the selection of NEXUS was not the product of a competitive process. ANR also argued that DTE Gas did not make a request for proposal nor did it solicit offers from competing providers for capacity. ANR argued that DTE Gas did not seriously consider competing greenfield gas projects because the utility believed it was already committed to NEXUS.

The ALJ agreed with the Attorney General. In reviewing MCL 460.6h(6) and (7), the ALJ determined that the Commission lacked authority to approve expenses found exclusively in the five-year forecast.

DTE Gas takes exception to the PFD and argues that its decision to contract for the 75 MDth/d of transport capacity on NEXUS beginning in 2017 is ripe for Commission approval. DTE Gas again argued that the applicable statutes provide the Commission with the requisite authority to authorize the requested expenses in this proceeding.

In its reply to exceptions, the Attorney General argues that the ALJ properly followed the Commission's November 22 order finding a lack of authority to approve an expense that is exclusively in the five-year forecast.

The Commission agrees. In the November 22 order the Commission determined that "it lacks the statutory authority to preapprove GCR costs to be incurred in future GCR plan years." November 22 order, p. 10. The plan year for this GCR plan ended on March 31, 2017. The expense in question will not be incurred until at least November 2017. Thus, the Commission lacks the requisite authority to approve this expense. Additionally, the Commission determined that:

Although the language of subsection (7) does permit the Commission to evaluate decisions that form the basis of the five-year forecast, nothing in this statutory provision provides the Commission with the authority to approve of GCR costs to be incurred in future GCR plan years. For this reason, the Commission finds DTE Gas's request for approval of costs related to the NEXUS contract to be premature, and agrees with the Staff that a different case, such as a future GCR plan

proceeding or even a general rate case, is a more relevant proceeding to raise the recovery of these GCR costs.

Id., p. 11.

As with Case No. U-17691, the ALJ considered whether a warning pursuant to MCL 460.6h(7) (Section 7 warning) is appropriate for future gas costs related to DTE Gas's decision to take 75 MDth/d of transport capacity on NEXUS beginning in 2017. The Commission finds that the same issue was previously fully litigated by the parties in Case No. U-17691. In that case, the Commission found:

Based on an evaluation of the record evidence and a consideration of the parties' arguments and the analysis and recommendations in the PFD, the Commission rejects the ALJ's recommendation that a Section 7 warning regarding the likelihood of recovering GCR costs resulting from the NEXUS contract is warranted. Pursuant to MCL 460.6h(7), the Commission may indicate any cost items in the five-year forecast that, on the basis of present evidence, the Commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future. The Commission agrees with the ALJ that costs associated with NEXUS should not be recoverable absent a transparent evidentiary presentation examining the full nature of the NEXUS arrangements.

November 22 order, p. 18. The Commission finds no adequate reason to deviate from its previous decision in this case.

RESA's Proposal to Reallocate the Reservation Charge

The ALJ next considered whether the Commission should require DTE Gas to adjust its pipeline capacity reservation charge as RESA has requested. The ALJ provided a thorough review of his findings of facts and positions of the parties on this issue on pages 47 to 54 of the PFD. The ALJ ultimately agreed with RESA's proposal and recommended adopting a reservation charge of \$0.254/Mcf for GCC customers and \$0.294/Mcf for GCR customers. In making his recommendations, the ALJ noted that in Case No. U-17691, the Commission reviewed a

substantially identical proposal to that presented in this case by RESA and found it “agree[d] with RESA’s initial premise that GCR customers benefit from gas commodity cost savings that are not available to GCC customers.” PFD, p. 55. The ALJ also provided that:

In the case at bar, as it did in its last Plan case, DTE Gas has failed to take proactive measures to comply with the Commission’s directives from Case No. U-17332. Its primary witness on this issue is strikingly incompetent to testify regarding many of the factual matters DTE Gas attempts to rely on. In many instances, his testimony lacks credibility. Potential witnesses who could credibly testify on the subject were not called to do so. Once again, as it did in its last Plan case, DTE Gas has adopted an obstructionist tactic that fails to move the ball forward on this issue.

Id. The ALJ further determined that RESA’s proposal attempts to comply with the Commission’s directive that the reservation charge be appropriately based on actual operations and expenses and that the proposal is on par with the benefits afforded both GCR and GCC customers.

DTE Gas takes exception to the PFD and makes the same arguments offered in briefing and in Case No. U-17691, that were addressed in the Commission’s November 22 order. DTE Gas also argues that RESA’s proposal is incapable of being subject to reconciliation. DTE Gas argues that the market value of gas at the receipt points into the gas interstate pipelines for which DTE Gas holds capacity cannot be quantified or verified after a GCR year. Additionally, DTE Gas argues, the market value of that gas at the delivery points into the DTE Gas system cannot be quantified or verified after the conclusion of the GCR year.

RESA also takes exception and argues that the ALJ should have followed the Commission’s recommendation in Case No. U-17691 and applied a 30% discount to DTE Gas’s capacity reservation charge for GCC customers.

In the previous plan case, the Commission provided a thorough discussion of substantially the same issue presented in this case. November 22 order, pp. 18-24. The Commission ultimately stated:

Having reviewed the parties' arguments, the record, and the PFD, the Commission finds that the PFD's analysis is well-reasoned and adopts the PFD's recommendation to approve RESA's proposal. The Commission agrees with RESA's initial premise that GCR customers benefit from gas commodity cost savings that are not available to GCC customers thus placing GCC customers at a relative disadvantage. Though the exact amount of that benefit was disputed in this case, the record indicates that GCR customers do benefit to some degree. *See*, 4 Tr 343, 537. The Commission also agrees with RESA that the pipeline spread value resulting in gas commodity cost savings for GCR customers is separate from midstream revenues from arbitrage activity of buying gas at a lower price and selling it at a higher price. The Commission approves of RESA's proposal, which amounts to a discount for GCC customers of 30% of the reservation charge. The GCR customers will be responsible for the balance of the reservation charges. Using this 30% discount to the GCC customers resolves the complexities presented by RESA's proposed flat fee reservation charges.

Id., p. 24.

Once again, the Commission finds no substantial change to the issue that warrants a different outcome than that in Case No. U-17691. Thus, the Commission agrees that the ALJ's recommendation for the proposed reservation charge of \$0.254/Mcf for GCC customers and \$0.294/Mcf for GCR customers does not quite comport with the Commission's November 22 order. Based on the Commission's prior decision and the current record, the Commission finds the simpler 30% discount of the reservation charge to GCC customers is more appropriate.

ANR-Alpena Costs

After discussing his findings of fact, the ALJ found that the evidentiary record in this case was little changed from that in Case No. U-17691. The ALJ pointed out that the Commission approved DTE Gas's capacity cost allocation regarding the ANR-Alpena pipeline expenses as part of its 2015-2016 GCR plan. Thus, the ALJ determined that the issue was already settled.

The Attorney General takes exception to the PFD and argues that the ALJ erred in failing to remove \$941,518 of ANR-Alpena costs from the GCR plan because the associated costs should be required to be recovered through base rates. The Attorney General argues that in DTE Gas's last

rate case, Case No. U-16999, the utility proposed that the cost of the ANR-Alpena transportation Contract No. 117263 be removed from the GCR cost recovery mechanism and included as an O&M expense in base rates. The Attorney General argues that Contract No. 117263 expired in 2013 and was replaced by Contract No. 122065 with ANR to deliver up to 50,000 decatherms (Dth) of natural gas to the utility's Alpena Station. Thus, the Attorney General argues, the costs associated with Contract No. 122065 should be removed from GCR plan costs and be recovered in base rates.

DTE Gas replies to the Attorney General's exception by arguing that the two contracts are not the same. DTE Gas points out that contract No. 122065 provides for 30,000 Dth/day more of transportation capacity for the summer period than did Contract No. 117263 and is therefore a material change in the terms.

The Commission adopts the recommendation of the ALJ. Furthermore, the Commission agrees with DTE Gas that, unlike Contract No. 117263 that only served a system integration purpose, Contract No. 122065 serves both a system integration and system supply purpose while resulting in a \$1.9 million avoided cost savings for GCR customers.

Firm Parking, GCR Factor Calculation, and Volume Cost Averaging Gas Purchasing Strategy

On pages 60 to 68 of the PFD, the ALJ addressed issues regarding DTE Gas's firm parking purchasing, GCR factor calculation, and the utility's volume cost averaging (VCA) gas purchasing strategy.

First, DTE Gas purchased a firm parking service for the injection and withdrawal of natural gas. DTE Gas argued that the firm parking service is the most reasonable and prudent alternative to achieve the storage deliverability requirement and to meet peak demands of GCR and GCC customers in winter months. The Attorney General argued that a Section 7 warning is

recommended to instruct the utility that the firm parking service costs may not be recoverable.

The ALJ recommended that the Commission reject the Attorney General's suggestion to issue a Section 7 warning to DTE Gas that its firm parking costs may not be recovered if they are found to be unreasonable or imprudently incurred.

The ALJ also recommended rejecting the Attorney General's proposed GCR factor calculation. The Attorney General argued that the procedure for determining the commodity cost GCR factor and the pipeline reservation charge are too convoluted. The Attorney General argued that the procedure could be simplified by using a more straightforward and conventional approach.

Finally, DTE Gas argued that the purpose of the VCA is to create price certainty for natural gas volumes to be delivered at a future date. The ALJ determined that there was no significant change in DTE Gas's VCA purchasing strategy from what was presented in Case No. U-17691 and accepted by the Commission in its November 22 order.

None of the parties filed exceptions to these last issues addressed by the ALJ. The Commission, likewise, finds no reason to deviate from the ALJ's recommendations as spelled out in the PFD and adopts those positions.

THEREFORE, IT IS ORDERED that:

A. DTE Gas Company's 2016-2017 gas cost recovery plan, as modified by this order, is approved.

B. DTE Gas Company's five-year forecast is accepted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of May 11, 2017.

Kavita Kale, Executive Secretary